

A Note on the Laws related to Alluvion and Diluvion of Land in West Bengal

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A) The Bengal Alluvion and Diluvion Regulation, 1825 (salient features)

This was a regulation for declaring the rules for determining claims to lands gained by alluvion, or by dereliction of a river or sea.

- 1 Claims and disputes as to alluvial lands were to be decided by usage of *shikast* or *paiwast* when it is clearly recognized and established.

Where, there is no such well established usage, the following rules were applied for determination of all claims and disputes related to lands gained by alluvion or by dereliction of a river or the sea:

2. When land was gained by gradual accession from the recess of river or sea, it was to be considered as an increment to the tenure of the person to whose land or estate it is so annexed, whether such land be held immediately under the Government or a zaminder or a tenure-holder or belonged to an under-raiyat.

3. The person in possession of the land to which there be an increment due to accretion, will not be entitled to any right of property or permanent interest therein on the accreted land more than he is possessing in his estate or tenure to which the land may be annexed nor he will be exempted from fresh determination of rent for the accreted land, including an under-raiyat, who may be *khudkast raiyat*, with *maurusi istmrari* tenure at a fixed rate of rent.

4. But the above rule was not applicable for sudden change of the course of a river breaking through an estate and would not truncate its boundary.

5. When a char or island was formed in a large navigable river, the bed of which was not a private property, or the sea, and the channel between such char or island and the bank of the river or sea was not fordable or connectable, then the char or island was at the disposal of the Government

6. If such channel was fordable, then the char-land was considered to be an accession to the most contiguous estate or estates.

This Regulation stood repealed with the coming into force of sec 59(1) of the WBLR Act, 1955, substituted by the WBLR (Amendment) Act, 1965.

B) The Bengal Alluvion and Diluvion Act, 1847 and The Bengal Alluvion (Amendment) Act, 1868

This Act dealt with the assessment of lands gained from the sea or by alluvion or dereliction within the provinces of Bengal, Bihar and Orissa by survey of riparian areas and assessment of revenue by the Collector.

This Act stood repealed with the coming into force of sec 59(2) of the WBLR Act, 1955, substituted by the WBLR (Amendment) Act, 1965.

C) The Bengal Alluvial Land Settlement Act, 1858

This Act dealt with the further provisions for assessment of revenue for settlement of lands gained from the sea or by alluvion within the provinces of Bengal, Bihar and Orissa (Bengal Presidency).

This Act stood repealed with the coming into force of sec 59(3) of the WBLR Act, 1955, substituted by the WBLR (Amendment) Act, 1965.

D) The West Bengal Land Reforms Act, 1955

Sec 12 of the WBLR Act states that any land gained by gradual accession to *a plot of land*, whether from a recess of a river or of the sea, shall vest in the State Government and the raiyat who owns *the plot of land* shall not be entitled to retain such land as an accretion thereto.

Sec 12 was substituted by the WBLR (Amendment) Act, 1965. The original term was *holding*, which was substituted by *plot of land*, by the WBLR (Amendment) Act, 2000 with retrospective effect from 7.8.1969.

Regarding **diluviated land**, there was a provision u/s 11 of the WBLR Act, 1955, which stated that, the right, title and interest of a raiyat shall subsist in such holding or portion thereof, during the loss by diluvion not exceeding twenty years, and the raiyat shall on its reappearance at any time within that period have the right to possession thereof and be liable to pay such revenue as in the opinion of the Revenue Officer is fair.

However the provision u/s 11 of the WBLR Act has since been repealed by the WBLR (Amendment) Act, 2000 with retrospective effect from 7.8.1969.

Bengal Tenancy Act, 1885

(Salient features)

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A) Classification of Tenancy: Classes of Tenants (Sec 4)–

- 1) Tenure-holders including under-tenure-holders
- 2) Raiyats
- 3) Under-raiyats, holding immediately or mediately under raiyats.

Raiyats are classified as follows:

- 1) Raiyats holding at fixed rates – rent fixed in perpetuity / rate of rent fixed in perpetuity
- 2) Occupancy raiyats – with right of occupancy on land held
- 3) Non-occupancy raiyats – with no right of occupancy

B) Incidents of Occupancy Raiyats:

- 1) A raiyat, who has cultivated or held land for twelve years in a mauja, has a right of occupancy.
- 2) The lands held may be different at different points of time but they must be in the same village.
- 3) They are also known as *khudkast* raiyats. *Khud* means own and *kast* means cultivation.
- 4) Khudkast raiyats are permanent raiyats settled in a village, where they reside.
- 5) The rights of Khudkast raiyats are heritable but not transferable by sale or gift.
- 6) The Occupancy Raiyats could not be evicted as long as they paid their rent.

C) Continuance of existing occupancy rights: (Sec 19(1))

A raiyat, who, immediately before the commencement of BT (Amendment) Act 1928, was by operation of law or custom or otherwise, enjoying occupancy right in any land, continued to do so, after the amendment Act came into force.

D) Incidents of holding at fixed rent: (Sec 18)

- 1) The right of a raiyat holding at a rent or rate of rent fixed in perpetuity is heritable and transferable.
- 2) Cannot be ejected by his landlord except for breach of terms of contract under the Act
- 3) Shall be deemed to be a settled raiyat subject to fulfilling he conditions of Sec 20 of the BT Act
- 4) He has the right to plant, enjoy the products of such plants, to fell or dispose of the timber of any tree on the land in his holding.

E) Incidents of a non-occupancy raiyat:

Raiyats, having no right of occupancy on the land they cultivate are known as non-occupancy raiyats. They are also known as *paikast*. *Pai* means non-resident and *kast* means cultivation. The paikast raiyats are residents of another or neighbouring village and cultivates in another village. Normally they were temporary cultivators on contract to cultivate the lands of khudkast raiyats, who were unable to cultivate themselves. Their rights were not heritable or transferable.

F) Grounds of ejection of non-occupancy raiyats:

- 1) on failure of payment of arrear of rent
- 2) land has been rendered unfit for the purpose of tenancy
- 3) breach of condition or stipulation agreed between the landlord and raiyat

- 4) on expiry of registered lease under which the raiyat was admitted to the occupation of land
- 5) On expiry of term for which the entitled to hold at such a rent.
- 6) on refusal to pay fair and equitable rent as per sec 46.
- 7) On refusal to agree to enhancement of rent as per sec 46

G) Difference between Raiyat & Tenure holder:

A Raiyat means primarily a person who has acquired a right to hold land for the purpose of cultivating by himself or by his own family members or labourers etc.

A person shall not be deemed as a raiyat unless he holds land under a proprietor or a tenure-holder.

A Tenure-holder means a person who acquired right from a proprietor or from another tenure-holder a right to hold land for the purpose of collecting rents or for bringing it under cultivation by establishing tenants on it.

For determination whether a tenant is a tenure-holder or a raiyat, the Court has to consider:

- i) local custom
- ii) the purpose for which the tenancy was originally created.

Where a tenant held area exceeding 100 standard bighas, the tenant was presumed to be tenure-holder until the contrary is proved.

H) Incidences of holding of an under-raiyat:

- i) The holding of an under-raiyat was heritable as other immovable property, but was not transferable except with the consent of his landlord.

ii) Every under-raiyat who, immediately before the commencement of the Bengal Tenancy (Amendment) Act, 1928 had a right of occupancy in any land, shall have a right of occupancy in that land.

iii) Every under-raiyat, who has a right of occupancy in his holding, shall have, as regards his immediate landlord, all the rights and liabilities of a raiyat, with a right of occupancy and shall be deemed to an occupancy-raiyat in his holding, in respect of his immediate land lord.

I) Liability of under-raiyat to pay rent and:

i) An under-raiyat is liable to pay rent as may be agreed upon between himself and the landlord (raiyat) at the time of admission, provided the rent or rate of rent agreed upon shall not be less than the rent or rate of rent payable by the raiyat to his landlord.

ii) The rent may be enhanced by a written registered contract, subject to the relevant provisions of the Act.

J) Grounds of ejection of an under-raiyat:

i) Failure to pay an arrear rent

ii) Use of land making it unfit for the purpose of tenancy

iii) On expiry of written lease

iv) Tenancy terminated by landlord on expiry of one year's notice, when he holds land other than written lease.

However, the under-raiyat cannot be ejected on the grounds of iii) and iv) above,

a) If he holds a permanent and heritable right to his land.

b) He has been in continuous possession of the land for 12 years or more before or after the commencement of the Bengal Tenancy (Amendment) Act, 1928 or has a homestead thereon.

WEST BENGAL ESTATE ACQUISITION ACT, 1953

(West Bengal Act I of 1954)

Main features:

- i) The Estates or rights & titles of Intermediaries or Zamindars were abolished
- ii) The Raiyats were brought directly under the Government
- iii) Rents to be paid by the Raiyats to the Government were fixed
- iv) Individual Ceilings for different classes of Lands were imposed
- v) Record of Rights were prepared under this Act by revising RORs prepared under the Bengal Tenancy Act 1885.

Important Provisions:

Sec 2 – Definitions: Agricultural year, agricultural land, non-agricultural land, non-agricultural tenant, intermediary, rent, charitable purpose, religious purpose, notified area, homestead, incumbrance, date of vesting, estate or tenure.

For any definition, which is not exhaustive in this Act, eg. estate or tenure, the definition given in the Bengal Tenancy Act 1885, should be taken.

Sec 4 - Notification vesting estates and rights of intermediaries:

- i) Issuing district-wise notification by Government vesting all estates and rights of intermediaries free from any incumbrances on the 1st day Baisakh of Bengali year 1362 (15. 4. 1955).
- ii) All such notifications were published in at least two issues of two news papers (one of which must be Bengali) and also by other means of wide publicity.
- iii) After such publication, the Government issued notification in official gazette which was the conclusive proof of such notification.

Sec 5 – Effect of notification:

- i) After issue of notification u/s 4, on and from the date of vesting, all estates and rights of intermediaries, including subsoil rights in mines and minerals, *sairati rights* in hats bazaars, ferries, fisheries, tolls etc. vested in the State.
- ii) Rights in all types of forest land held by intermediaries vested in the State.
- iii) All grants or confirmation of titles in favour of intermediaries in respects of their estates, vested in the State.
- iv) All raiyats or non-agricultural tenants holding land under an intermediary, held such land directly under the State from the date of vesting, as if the State had been the intermediary, on the same terms and conditions immediately before the date of vesting and pay rent to the State.

Sec 5A – Restriction on certain transfers:

- i) The State Government was empowered to enquire into any case of transfer of land made by the intermediary between 5. 5. 1953 and the date of vesting if in its opinion there were prima facie reason to believe that such transfer was not *bona fide*.
- ii) Transfers in favour of certain category of relatives of transferor (here an intermediary were held to be not bona fide, until contrary is proved.

- iii) If such transfer was found to be *bona fide*, then the transfer deed was held valid and the transferee was allowed to retain the land subject to the ceiling provisions, and the transferred land was included in the total land held by the intermediary prior to such transfer for determination of his ceiling for retention of land u/s 6.
- iv) If such transfer was found to be not *bona fide*, then the transfer deed was cancelled and the transferee was not allowed to hold the such land and the transferred land was included in the total land held by the intermediary prior to such transfer for determination of his ceiling for retention of land u/s 6.
- v) A transfer was held not *bona fide* if it was made mainly for the purpose of increasing the amount of land one may retain by indirect control or for the purpose of increasing the compensation amount. However if it was found that the land held by an intermediary did not exceed 25 acres in case of agricultural land and 20 acres in case of non-agricultural land any time between 5.5.1953 and the date of vesting, then such transfer was presumed to be *bona fide* even if made with any of the relatives in the restricted list.

Sec 6 – Right of Intermediary to retain certain lands:

Quantum of retainable land:

Agricultural land: Upto 25 acres

Non-agricultural land: upto 15 acres

Homestead land: upto 5 acres

Tank fisheries, orchards, livestock breeding, poultry, dairy: Unlimited

Mills, factories, tea gardens: As determined by Government

Corporation, religious or charitable institution for public purpose: Unlimited

Forest land: Cannot be retained and vested to the State.

All Ceiling excess lands were vested to the State.

Sec 10 – Collectors to take charge of estates and rights of intermediaries vested in the State.

- i) On publication of a notice u/s 4, the Collector takes charge of estates and rights of intermediaries vested in the State u/s 5
- ii) On a written order by the Collector, served on the intermediary or any other person in possession of such estate vested to the State, has to give up such possession by a date specified in the order, along with all documents. Registers, records etc connected with management of such estate.

Sec 14 – Sec 26 – Assessment and payment of compensation for the Estates vested to the State:

- i) These sections deal with the provisions for assessment and preparation of compensation rolls for payment of compensation to the intermediaries, whose estates had been vested to the State.
- ii) The compensation rolls were prepared mainly by assessing the gross income and net income of each intermediary from such estates and the amount of compensation payable was determined as per prescribed provisions in the Act.
- iii) There are provisions for filing of objections by interested persons in respect of any compensation roll and disposal of such objections by prescribed authorities.

Sec 39 – Sec 44 - Preparation of Record of Rights:

- i) U/s 39(1), the State Government orders preparation of RORs in respect of any district or part of a district by revising RORs prepared under the Bengal Tenancy Act 1885.
- ii) Sections 40 to 43 deals with the determination of rent payable by raiyats for agricultural land or non-agril. land and by intermediaries for tea gardens mills, factories etc.
- iii) U/s Section 44(1), the RORs prepared or revised, are placed in draft publication for a prescribed period and objections are invited regarding any entry or any omission in the ROR during the period of publication.
- iv) After all objections received were considered and disposed of, the RORs are finally published under prescribed certification.

Sec 49 – Sec 52 – Acquisition of interests of raiyats and under-raiyats:

- i) U/s 49, the provisions for acquisition of interests of raiyats and under-raiyats comes into force in the area of any district or part of any district from such date, when the State Government issues notification appointing such dates.
- ii) U/s 52, on the issue of such notification u/s 49, the provisions under chapters II, III, V and VII of this , which are applicable to intermediaries, will also be applicable mutatis mutandis to raiyats and under-raiyats, as if such raiyats and under-raiyats were intermediaries and the lands held by them were estates.
- iii) A person holding land under a raiyat or under-raiyat, will be treated as a raiyat as per provisions, u/s 5.
- iv) The raiyat or under-raiyat shall be liable to pay rent to the State for the land he is allowed to retain, as provisions under Sec. 52.

Sec 57B – Bar to jurisdiction of Civil Courts in respect of certain matters:

There are specific provisions for disposal of disputes arising after final publication of RORs as there is Bar to Jurisdiction of Civil Courts regarding matters related preparation and entries in the RORs under this Act.

**Statutes for Preparation and Maintenance of Record of Rights
in West Bengal**

| | Bengal Tenancy Act, 1885 | West Bengal Estates Acquisition Act, 1953 | West Bengal Land Reforms Act, 1955 | Remarks |
|--|---|---|------------------------------------|---------|
| Order of the State Govt. for preparation / revision of ROR | U/s 101(1) & 102A | U/s 39 (1) | U/s 51(1) | |
| Conclusive proof of such order by notification | U/s 101(3) | U/s 39 (2) | U/s 51(2) | |
| The Revenue Officer will prepare ROR | U/s 103 | U/s 39 (3) | U/s 51(3) | |
| Draft Publication of ROR | U/s 103A(1) | U/s 44 (1) | U/s 51A(1) | |
| Final Publication of ROR and certification by Rev. Officer | U/s 103A(2) | U/s 44 (2) | U/s 51A(2) | |
| Conclusive proof of certificate of FP of ROR | U/s 103B(3) | U/s 44 (3a) | U/s 51A(6) | |
| Maintenance of ROR after FP | Several sections regarding assessment of rents etc. | No specific section but correction of ROR U/s 44 (2a) | U/s 50 | |

Stages for preparation of Record of Rights in a Mauza (as per Rules framed under the Acts):

- i) Kistwar
- ii) Khanapuri
- iii) Bujharat
- iv) Attestation
- v) Draft Publication
- vi) Final Publication

1) Presumption of correctness of entry in the Record of Rights -

The entries in a finally published ROR are presumed to be correct unless proved by evidence to be incorrect. (Gour Gopal vs Govt of WB 67 CWN 12). This presumption of accuracy is a rule of evidence. (Kazi Mohammad vs Sibram Bandopadhyay 70 CWN 1066: AIR 1967, Cal 10)

However, the settlement record is not a document of title. It is relevant as an evidence of title to the recorded plots of land.

Points to remember-

- a) Method of preparation of ROR in a settlement operation
- b) Field work – DP – FP – Certification under relevant section of the Act – conclusive proof of FP of ROR, presumed to be correct until rebutted by evidence.

2) Bar to Jurisdiction of Civil Court: Provisions under the Land Laws –

A) WBEA Act, 1953:

- i) Sec. 46 – Bar to civil jurisdiction (Omitted by the WBEA (2nd Amendment Act), 1973)
- ii) Sec. 57B- Bar to civil jurisdiction in respect of certain matters –including preparation or revision of ROR, any alteration of the of any entry in the ROR etc.

B) WBLR Act, 1955:

- i) Chapter IIA – Restriction of alienation of land by Scheduled Tribe - Bar to civil jurisdiction
- ii) Chapter IIB - Ceiling Laws- Sec 14X – Bar to civil suits regarding determination of land ceiling
- iii) Chapter III- Bargadars – Sec 21 – Bar to Civil-jurisdiction reg. matters u/s 17, 18, 19B & 20B.
Sec 21(3) – Civil or Criminal Court will refer the matter regarding determination of bargadarship to the Authority u/s 18(1).
- iv) Chapter VIIA – Preparation or revision of ROR – Sec 51C(1) & (2) Bar to civil court
- v) Chapter IX – Misc. – Sec 61 – Bar to civil court reg. determination of the Revenue Officer in land matters under provisions of this Act.